



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2021-0643; FRL-9128-02-OAR]

Notice of Determination: Petitions Granted under Subsection (i) of the American Innovation and Manufacturing Act of 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The purpose of this notice is to alert the public of the Environmental Protection Agency's (EPA) decision to grant two petitions submitted under the American Innovation and Manufacturing Act of 2020. The two petitions request that the Environmental Protection Agency restrict the use of certain regulated substances, as defined in the Act, in certain commercial refrigeration applications, pursuant to its authority under the Act to promulgate rules that restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used. The Agency is also using this notice to inform the public of how it will treat two additional submissions by the Air-Conditioning, Heating, and Refrigeration Institute under this subsection.

DATES: EPA granted the two petitions referenced in this notice via letters signed on September 19, 2022.

FOR FURTHER INFORMATION CONTACT: Allison Cain, Stratospheric Protection Division, Office of Atmospheric Programs (6205A), Environmental Protection Agency, telephone number: 202-564-1566; email address: cain.allison@epa.gov. You may also visit EPA's website at <https://www.epa.gov/climate-hfcs-reduction> for further information.

SUPPLEMENTARY INFORMATION:

I. Background

Subsection (i) of the American Innovation and Manufacturing Act of 2020 (AIM Act or the Act),¹ entitled “Technology Transitions,” provides that the Administrator may by rule restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used. Under subsection (i)(3) a person may petition the Environmental Protection Agency (EPA) to promulgate a rule for the restriction on use of a regulated substance² in a sector or subsector, and the Act states that the petition shall include a request that the Administrator negotiate with stakeholders in accordance with subsection (i)(2)(A). Once EPA receives a petition, the AIM Act directs the Agency to make petitions publicly available within 30 days of receipt and to grant or deny the petition within 180 days of receipt, taking the factors listed in subsection (i)(4) into account to the extent practicable.

The Agency has received two petitions under subsection (i) of the AIM Act requesting that EPA promulgate rules to restrict the use of hydrofluorocarbons in certain commercial refrigeration applications.³ These petitions were submitted by the Air-conditioning, Heating, and Refrigeration Institute, et. al (hereby, “AHRI”) on March 24, 2022, and the International Institute for Ammonia Refrigeration, et. al (hereby, “IIR”) on May 23, 2022. After reviewing information provided by the petitioners and relevant information related to the “Factors for Determination” in subsection (i)(4) of the AIM Act, EPA granted the two petitions.⁴ The March 24, 2022, and May 23, 2022, petitions requested restrictions on the use of HFCs in sectors and subsectors that were also the subject of the petitions that EPA granted on October 7, 2021.

¹ The AIM Act was enacted as section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260) (codified at 42 U.S.C. 7675.116-260).

² The Act provides that “regulated substance” refers to those substances included in the list of regulated substances in subsection (c)(1) of the Act and those substances that the Administrator has designated as a regulated substance under subsection (c)(3). Subsection (c)(1) lists 18 saturated hydrofluorocarbons (HFCs), and by reference their isomers not so listed, as regulated substances. This is the current list of regulated substances, as no additional substances have been designated as regulated substances under subsection (c)(3).

³ Links to copies of these petitions and other petitions received to date can be found in the table at <https://www.epa.gov/climate-hfcs-reduction/petitions-under-aim-act>. EPA has a docket (Docket ID EPA-HQ-OAR-2021-0289-0044), where all subsection (i) petitions are posted, and where the public may submit information related to those petitions.

⁴ The letters granting the two petitions are available in the docket for this action.

EPA is also clarifying the treatment of two letters AHRI sent to EPA on August 19, 2021, and October 12, 2021.⁵ EPA initially included these letters on the Agency’s website as new petitions. However, after further review EPA determined that these two AHRI letters are addenda to AHRI’s petitions that EPA granted on October 7, 2021. EPA made this determination because the subsectors listed in these letters were identical to those covered by the already-granted AHRI petitions and because EPA received the August and October 2021 letters before or very near in time to the Agency’s action granting the initial set of petitions.

II. What happens after EPA grants a petition?

Where the Agency grants a petition submitted under subsection (i) of the AIM Act, the statute requires that EPA promulgate a final rule not later than two years from the date the Agency grants the petition. Per subsection (i)(1) of the AIM Act, EPA may issue rules that restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used. The Act establishes that no rule developed under subsection (i) may take effect earlier than one year after the rule promulgation date. In addition, prior to issuing a proposed rule under subsection (i), EPA must consider negotiating with stakeholders in the sector or subsector in accordance with negotiated rulemaking procedures.⁶ If the Agency decides not to undertake a negotiated rulemaking, the AIM Act requires the Agency to publish an explanation of its decision not to use that procedure.

As noted, all four of the requests for restrictions on the use of HFCs (i.e., the two petitions granted on September 19, 2022, and the two letters considered as addenda) addressed sectors and subsectors that are the subject of an upcoming Notice of Proposed Rulemaking (NPRM) that was initiated by the prior petitions granted by the Administrator on October 7, 2021. In that rulemaking EPA will consider proposed restrictions in the same sectors and

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⁶ The negotiated rulemaking procedure is provided under subchapter III of chapter 5 of title 5, United States Code (commonly known as the “Negotiated Rulemaking Act of 1990”).

subsectors covered by the May and March petitions and the two letters considered as addenda.

EPA is therefore considering addressing all four of the newer requests for restrictions in the same upcoming proposal. EPA issued a notice informing the public of the Agency's consideration of using the negotiated rulemaking procedure for the sectors and subsectors addressed in the petitions granted on October 7, 2021, and the Agency's decision to not use these procedures.⁷

Because the AIM Act subsection (i)(2)(A) requires that EPA consider negotiating with stakeholders using the negotiated rulemaking procedure “[b]efore proposing a rule for the use of a regulated substance for a sector or subsector,” EPA’s prior consideration and decision not to use negotiated rulemaking applies to the petitions addressed in this notice, which request restrictions on sectors and subsectors for which EPA already considered negotiated rulemaking.

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⁷ EPA issued a separate notice in the *Federal Register* regarding its consideration of using negotiated rulemaking procedures for a rulemaking that responds to granted and partially granted petitions (December 29, 2021; 86 FR 74080).